

From: Warren Havens <warren.havens@sbcglobal.net>
Reply-To: Warren Havens <warren.havens@sbcglobal.net>
Date: Friday, June 1, 2012 6:35 AM
To: Richard Sippel <Richard.Sippel@fcc.gov>, Mary Gosse <Mary.Gosse@fcc.gov>
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Subject: SkyTel (Havens) report on the 100 boxes / & other. EB Docket No. 11-71, Maritime

Judge Sippel:

In accordance with your instruction to me (for SkyTel), to report to you at this time (end of the month) on the 100 Boxes, I submit this report.

This is a factual report (but for one case citation, and my observations as to some facts).

I will follow up with a more detailed report on the 100 Boxes, including documentation exhibits indicated below.

I also comment on additional developments below, and request leave to accept these, if you see fit.

There are other important factual developments, apart from the 100 Boxes, that SkyTel will separately present in an appropriate manner.

PART I

1. The "100 Boxes" are those I defined and explained at the last pre hearing conference by telephone attendance, and which I also described in my written report prior thereto.

In sum, these are the Boxes of records of the Mobex AMTS site-based licenses, and associated stations, etc. sold to Maritime, placed in storage soon after the sale, according to Maritime and with no back up records, according to Maritime.

- Maritime abandoned this property: the records of what it bought, and leases, customer information, etc.
- Mobex put it in storage.
- Mobex did not pay a minor part of the storage fees (under \$3,000, see below) and "believed" these were destroyed (and had no back up, of what are now very important- see below),
- and in multiple legal proceedings where these records were central, neither Maritime nor Mobex outside or inside counsel, or officers (John Reardon, as CEO of Maritime and Mobex)

called the storage company (or so they suggest) to find out the boxes are there.

- (Despite its only copies of the site-based licenses records of construction and operation to the date of sale to Maritime being, it believed, destroyed, Maritime by John Reardon managed to pursue for years before the FCC (see DA 10-1013 and DA 08-1971) a refund for \$1.3 million in Universal Service Fund payments in that time period (up to the sale) with specific allegations of the nature of its site-based licenses in much of the nation (including that they were not Interconnected-- a requirement of AMTS since it is CMRS by regulation: section 20.9(a)(5): it is "public coast" service). Maritime also alleged such particular details, for which it would also have needed the alleged-destroyed documents, in a Florida lawsuit.)

That story came from Maritime and the storage company, not SkyTel.

- All authors and agents of the story are attorneys "at law." I suggest that is a relevant fact, too. (See my pro se request to enlarge at the start of the hearing, for example.)
- SkyTel informed loud and clear the Wireless Bureau from well before this Hearing under FCC 11-64 began, and the Enforcement Bureau during the Hearing long ago, of this 100-Box lost-evidence story, and pleaded for action.
- SkyTel got no action or assistance -- to this day-- to find and secure these 100 Boxes, sitting right outside DC.

2. Court evidence preservation Order issued.

SkyTel, yesterday morning (May 31) obtained a ruling and **order by the Judge in the Maritime Bankruptcy case**, in accord with SkyTel's motion and at a hearing today, that **the 100 Boxes be preserved in full**. The motion seeking this is attached.

The Judge ordered, in sum:

- The contents of the boxes will be, in full, scanned to a CD by a bonded copier (litigation document production specialist) ("Bonded Copier") and Bates stamped.

- The Bonded Copier (or the Court if needed) will maintain the CD until a privilege/confidentiality review process can be established, with participation of all with interests, including the storage facility owner (an attorney) and persons acting for the dissolved Mobex entities (in the SkyTel v Maritime-Mobex case in the NJ US District Court-- that is John Reardon, from the record).

- As SkyTel proposed, to benefit the Estate of Maritime and to facilitate this discovery -- SkyTel will pay to the storage company storage fees unpaid by Mobex (or Maritime), and also pay its costs to retrieve/ re-store (after the full scanning) the Boxes, and all of the Bonded Copier costs.

A true and correct copy of this court Order, and any important related item(s), will be in my follow-up report.

3. Opposition to the evidence preservation action.

The dissolved Mobex entities-- acting by post-dissolution former Mobex CEO John Reardon via counsel-- **opposed** the above preservation action in written communication with SkyTel

counsel. See, as the latest example, the in-line attachment below. [*]

Mr. Reardon is CEO of Maritime, also.

SkyTel made clear to the dissolved Mobex-- Mr. Reardon now with Maritime, and his attorney as representative of the dissolved Mobex-- that the evidence-preservation actions SkyTel was pursuing -- (as I stated to you (Judge Sippel) at the last pre hearing event-- with Mr. Reardon in attendance)-- would include arrangements to protect any actual privileged or confidential information in the records in the 100 Boxes.

- Nevertheless, SkyTel encountered this opposition, causing delay and cost increase.

For records that the dissolved Mobex and Maritime (Mr. Reardon, heading both as CEO of each) did not want, and "believed" were destroyed for lack of nominal payments, with no back up copies, we now find warnings to SkyTel (see below) as to breach of alleged privileged and confidential documents in the 100 Boxes. These are apparently now important documents.

- This is likely to unfold in further delays.

SkyTel asserted and asserts good cause for this evidence preservation order and particular arrangement.

- Particular reasons are indicated herein and in past SkyTel filings in this hearing (and in other legal proceedings SkyTel identified in this hearing).

- Generally, motions for Orders to preserve evidence, in appropriate bankruptcy cases, are discussed in here:

<http://www.abiworld.org/AM/Template.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=39120>

4. 100 Boxes storage agreement.

SkyTel obtained from the Storage company a copy of the Mobex executed storage agreement of these 100 Boxes.

- It was signed by (only by) John Reardon.

- A true and correct copy of this will be in my follow-up report.

5. 100 Boxes list, and removal of some Boxes.

SkyTel also obtained a copy from the storage company a list of the 100 Boxes (with box number in the storage system, and other identification, dates of storage, etc.).

- A true and correct copy of this will be in my follow-up report.

- This shows that some of the Boxes, less than 10 as listed, were removed.

- This is a large quantity of documents removed. There were not all "destroyed" as Maritime certified as its, and Mobex's "belief" in this hearing and in Wireless Bureau proceedings.

- The removal was after Mobex and Maritime allege that Mobex was dissolved, some right after SkyTel filed its antitrust case against Maritime and Mobex in mid 2008 in US District Court, NJ.

- SkyTel has noticed a deposition of the storage company personnel, to examine this and other matters relating to the 100 Boxes.

- SkyTel plans other depositions on this and related matters, for respective purposes of the several legal proceedings involving, in part, the Maritime-claimed AMTS site-based licensed, and related geographic licenses (Maritime procured the latter to a large degree, by

representations that the former being all valid-- not just by auction cash bids).

6. Records of the unpaid storage fees.

SkyTel also obtained a copy of storage company records showing the unpaid fees (the basis of the Maritime report in this FCC hearing, that it "believed" that 100 Boxes of records were destroyed).

- A true and correct copy of this will be in my follow-up report.
- This shows that persons acting for Mobex, even after dissolution, continued to pay storage fees until more recent periods of time. This is contrary to the Maritime representations in this hearing (and also made in the Wireless Bureau proceeding noted in Part II below).
- There is less than \$3,000 (three thousand dollars) showing as unpaid.
- (It will cost SkyTel over \$60,000, as currently estimated, in legal and Bonded Copier costs, to preserve these records (and in addition, large expenditure of our staff time, otherwise needed for our core FCC-license business, nonprofit and for profit: nationwide wireless for smart transport, energy and environment proection).
- Also, the storage company sent the storage fee bills to an address in Indiana, after Mobex dissolved. It is a Maritime address, as far as SkyTel can currently determine.--
- As part of the above noted deposition(s), SkyTel will seek to find out who paid the storage fees, after the sale by Mobex to Maritime, and what person(s) dealt with the storage company, including removal of some of the Boxes noted above.

7. Ancillary developments to make whole in full or substantial part the "innocent" creditors (others creditors are not innocent).

See the attached SkyTel motion that resulted in the court preservation Order noted above (item 2 above).

- See ¶¶ 7 and 8. As noted there, and as can be demonstrated by license-value evidence in the bankruptcy case, if the nationwide collection of site-based licenses sold to Maritime (and secondarily, the \$1.3 million refund claim) are shown to be defective when sold by the evidence in the 100 Boxes (or otherwise), then Maritime Debtor in Possession (*) will have a claim against Mobex and its principals for the value of the loss.(**) Even the direct damages could pay off the innocent creditors.

(*) That is, the DIP nder current management, or a trustee that may be appointed to solve the conflict: John Reardon as CEO of Martime which from all appearances has this claim, and also CEO of Mobex, and heading the post-dissolution Mobex legal matters, that would defend against the claim.

(**) See FCC v WOKO, **329 U.S. 223**: "[A]s matter of law, the fact that there are innocent stockholders can not immunize the corporation from the consequences of such deception. If officers of the corporation by such mismanagement waste its assets [FCC licenses, in this WOKO case], presumably the State law affords adequate remedies against the wrongdoers. . . . The Commission on the other hand insists that in administering the Act it must rely upon the reports of licensees. It points out that this concealment was not caused by slight inadvertence nor was it an isolated instance, but that the Station carried on the course of deception for approximately twelve years."

However, in addition to the preceding potential claim, the surrendering of the majority of the

Maritime site based licenses under the Stipulation discussed below, also supports an existing large damage claim of Maritime against Mobex, that appears to be more than sufficient to pay the innocent creditors.

- Maritime bought these now-surrendered licenses from Mobex for valuable consideration reported (or partly disclosed) in the bankruptcy case.

- Maritime held on to these for about seven years, and at high allocable legal costs, after it acquired, by means at issue in this hearing, geographic licenses for the same block surrounding the surrendered licenses. Why? --

- Maritime previously explained some of the reasons publicly and privately: these licenses will be valuable if they are valid and can be kept, in the case it loses the geographic licenses due to challenges by SkyTel, and then the Enforcement Bureau (now in this hearing).

- Maritime asserted previously to the FCC, shown in Auction 57 and 61 proceedings, that it bought operating AMTS licenses providing nationwide services. It reported partnerships and close relations with Motorola, Nextel (an investor) and others. E.g.

<http://www.thefreelibrary.com/Mobex+Receives+Agreement+of+Strategic+Investment+from+Nextel+into...-a066147891>

- If these licenses Mobex sold were valid, and anywhere in the value range reflected in the Maritime bankruptcy (or in any other known values for valid geographic sub-GHz wide area licenses), they could be operated for profit, leased, or otherwise support financing to maintain the licenses under FCC requirements.

- The fact that these are now surrendered, appears to give Maritime a major current claim against Mobex and its principals, since the surrendering of these valuable assets would never take place by any fiduciary -- especially subject to bankruptcy law-- if they were valid when sold.

- As shown in public records, including Green v. Mobex, US District Court, N.D California, John Reardon testified that Mobex had made far over \$100 million in license sales to Nextel(*) and some tower sales, and used a large amount (stated therein) of the profits to buy the AMTS site-based licenses it sold off, after a few more years, to Maritime.

- This also places a value on these licenses, now largely surrendered.

- In addition, it demonstrates that the principals of Mobex should have capacity to pay claims by Maritime, Debtor in Possession, for the "innocent" creditors.

(*) Nextel reports: "In May 2001, we purchased from Mobex Communications, Inc. 800 MHz and 900 MHz specialized mobile radio licenses and related assets and an equity interest in a subsidiary of Mobex for a total cash purchase price of \$117 million." From Nextel's 12-2001 10K. Copy here:

<http://www.getfilings.com/o0000950133-02-001283.html>

[*] The below email is pasted in here as an in-line attachment to Part I above.

Mr. Traflet, below, is an attorney at law representing the dissolved Mobex entities in Havens (& other SkyTel entities) v Mobex, Maritime et al., US District Court, NJ.

Mr. John Reardon, the former CEO of the Mobex entities, acts on their behalf in this case, including in retaining and instructing Mr. Traflet.

From: Stephen Traflet [mailto:STraflet@trafletfabian.com]

Sent: Wednesday, May 30, 2012 5:58 PM

To: Richards, R.N. Tendai; Robert Mauriello

Cc: Friedman, Kenneth; Hahm, Eugene

Subject: RE: Skybridge

I reiterate that these documents are clearly the business records of Mobex, and being maintained by Nations Capital pursuant to a contract with Mobex. Consistent with Judge Shwartz's directives, I have asked for those documents to be maintained, and will undertake a review of the documents pursuant to Plaintiffs' requests in the NJ action. These documents may contain privileged and confidential materials.

Any efforts on the part of Plaintiffs or their legal representatives to obtain the subject files before they have been reviewed by counsel would clearly be both unethical and sanctionable.

Any further steps to circumvent the discovery rules and the RPC's are at your own peril.

PART II

I note the tight **coincidence** of:

- [1] the Maritime stipulation between Maritime and the Enforcement Bureau (EB) [**]: (i) to turn in for cancellation many of the site-based licensed stations in full, and in others, to turn in the AMTS A-block for cancellation, and (ii) to "stipulate" for others of these stations, certain periods of time of discontinuance [*] --with--

- [2] the information presented in this hearing (and in other Maritime legal actions) by SkyTel of the location of the 100 Boxes, and as Maritime knows, the Skytel action in legal proceedings including the Maritime bankruptcy to have these 100 Boxes of records first fully preserved, and eventually disclosed, reported on above.

[*] As the EB and Wireless Bureau (WB) and Maritime know, these cancellation actions are taken in pending restricted proceedings between SkyTel and Maritime before the WB, and the stipulated discontinuance admissions, whether or not accurate, are also issues in those restricted proceedings.

- SkyTel was not informed of these ex parte actions by service of the filings before the WB or otherwise.

- SkyTel's challenges in these restricted proceedings before the WB involve more than challenge to the site based licenses themselves (as valid or not), including but not limited to issues in SkyTel's pending Application for Review of Maritime's long form in Auction 61, which was a result in large part of Maritime's representations to the WB and other bidders in the market prior to and at the time of Auction 61 that all its site-based licenses were valid and in operation.

- There is additional evidence that will be presented on this.
- SkyTel will be pursuing these ex parte rule issues and other issues.
- The WB instructed SkyTel earlier that those restricted proceedings before the WB are not stayed by this Hearing under FCC 11-64. Maritime attempted but did not succeed in an attempt for that purpose. This instruction was prior to SkyTel filing a petition to deny Maritime's application to renew its site-based license for the Atlantic Coast region, WRV374, in which it renewed all its stations, including ones now turned in for cancellation, as valid: i.e., at minimum, stations that were timely and properly built, as CMRS with interconnection, with the required coverage (no gaps but continuity of service-coverage over virtually the entire US coastlines, and Mississippi River Waterway System, and other major Rivers) when built and thereafter, and permanently maintained.

An even more **obvious, simple and threshold relevant fact** to this hearing on issue (g) is the clear fact, demonstrated to the WB and EB (and of course to Maritime), repeatedly by SkyTel that the Maritime site-based licenses never got close to meeting this required construction-coverage standard, which was the reason for the creation of AMTS, codified in section 80.385(a) (1999).

- (E.g., the is **no coverage overlap** ascertainable by expert engineering at all, in the entire Maritime Atlantic Coast license, WRV374. Maritime did not contest this, when shown in the SkyTel petition to deny the Maritime renewal application of WRV374 in year 2011. In fact, Maritime and its predecessors did not every assert any station as ever in operation with the basic details that define a station (without which it is only a spectrum warehouse play): exact location, site facility and controller and contract information, transmitter model and power, antenna system details, and resultant EPR and directionality, description of interconnect, description of CMRS ['S' means service, means customers], etc.)
- This continuous-coverage requirement was applied fully to Havens and companies (beyond "fully," such as where he covered 100% of waterways with no gaps, except for minor coastline portions alleged taken up by Mobex-- and without such continuity of coverage along the coast), but it was never applied to Maritime, Mobex and predecessors.
- This required coverage is described in the HDO FCC 11-64 as underlying the issue (g) construction. What has to be "constructed" **is** this required service coverage most fundamentally (with required equipment, CMRS interconnection, within station license parameters, etc.).
- It is not acceptable for the government to engage in repeated deliberate unfair and unequal application of the law. (Errors can be understood, lack of funds and capacity, and the like, is the way of life: those are very different.) That underlies this Maritime history, why issues now in this hearing (in part) have festered for ages, and "sanction" threats to the undersigned by some at the FCC who can't face their own misuse of powers when put to them.

Thank you again,

Respectfully,

Warren Havens

President

Skybridge Spectrum Foundation

V2G LLC

Environmental LLC

Verde Systems LLC

Telesaurus Holdings GB LLC

Intelligent Transportation & Monitoring Wireless LLC

Berkeley California

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[**] The below email contained filings regarding matters in Part II above: certain Maritime-EB stipulations.

- W. Havens

From: Brian Carter <Brian.Carter@fcc.gov>

To: "cole@fhhlaw.com" <cole@fhhlaw.com>; "wright@khlaw.com" <wright@khlaw.com>; "jsheldon@fr.com" <jsheldon@fr.com>; "rmiller@gardere.com" <rmiller@gardere.com>; "czdebski@eckertseamans.com" <czdebski@eckertseamans.com>; "feldman@fhhlaw.com" <feldman@fhhlaw.com>; "mjp@catalanoplache.com" <mjp@catalanoplache.com>; "ajc@catalanoplache.com" <ajc@catalanoplache.com>; "ESchwalb@eckertseamans.com" <ESchwalb@eckertseamans.com>; "GHull@eckertseamans.com" <GHull@eckertseamans.com>; "richards@khlaw.com" <richards@khlaw.com>; 'Warren Havens' <warren.havens@sbcglobal.net>; Jimmy Stobaugh <jstobaugh@telesaurus.com>; "rjk@telcomlaw.com" <rjk@telcomlaw.com>; Robert Jackson <rhj@commmlawgroup.com>

Cc: Pamela Kane <Pamela.Kane@fcc.gov>; Richard Sippel <Richard.Sippel@fcc.gov>; Mary Gosse <Mary.Gosse@fcc.gov>

Sent: Thursday, May 31, 2012 2:21 PM

Subject: EB Docket No. 11-71 Maritime Communications/Land Mobile, LLC

Enclosed please find a courtesy copy of two pleadings filed by the Enforcement Bureau today.

Regards,

Brian J. Carter

Brian J. Carter

Attorney

Investigations & Hearings Division

Enforcement Bureau

Federal Communications Commission

445 12th Street, S.W.

Washington, D.C. 20554

202-418-1334

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

IN RE:

**MARITIME COMMUNICATIONS/
LAND MOBILE, LLC,**

Debtor.

§
§
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CASE NO. 11-13463-DWH

CHAPTER 11

**MOTION OF SKYTEL FOR AN ORDER DIRECTING THE
(I) RULE 2004 EXAMINATION OF NATION'S CAPITAL ARCHIVES STORAGE
SYSTEMS, (II) RELATED PRODUCTION, INSPECTION AND COPYING OF
DOCUMENTS, AND (III) PRESERVATION OF CERTAIN DOCUMENTS IN THE
INTERIM, AND REQUEST FOR EXPEDITED TELEPHONIC HEARING**

Warren Havens, Skybridge Spectrum Foundation, Verde Systems LLC (formerly called Telesaurus, VPC LLC), Environmental LLC (formerly called AMTS Consortium LLC), Intelligent Transportation & Monitoring LLC, and Telesaurus Holdings GB LLC (collectively, "SkyTel")¹ move this Court to enter an order pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure ("Rule 2004") and other applicable law: (i) directing the oral examination of Nation's Capital Archives Storage Systems ("NCASS"), through a designated representative or representatives, regarding, in general, the Debtor's acts, conduct, property, leases, joint ventures, contracts, liabilities, financial condition, and/or other matters which affect or may affect the administration of the Debtor's estate, the operation of any business by the Debtor, the source of any money or property acquired or to be acquired by the Debtor for purposes of formulating or consummating a plan, and any other matter relevant to the case or to formulation/consummation of a plan, and regarding, most specifically, the various documents discussed in this Motion and Exhibit D hereto, and any dealings between the Debtor, NCASS, or

¹ The SkyTel entities listed here are separate legal entities, all managed by Warren Havens, and for the purposes of this bankruptcy and in related proceedings before the Federal Communications Commission ("FCC"), pursue certain common interests.

others in connection with those documents (collectively, the “Examination Topics”); (ii) directing the inspection and copying -- by a bonded copier, at the expense of SkyTel,² and for the benefit of SkyTel and the bankruptcy estate -- of certain boxes of documents described below which are in the possession, custody, or control of NCASS (the “Boxed Documents”), (iii) directing the production by NCASS of certain other documents described below and in Exhibit D hereto that are related to the dealings between the Debtor, NCASS, or others in connection with, *inter alia*, the Boxed Documents, and (iv) directing that the Boxed Documents shall be preserved by NCASS, and not accessed by any other person or entity other than NCASS and the bonded copier, until that bonded copier completes its work described herein. In support thereof, SkyTel respectfully states as follows:

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§1408 and 1409. The relief requested herein is predicated on Bankruptcy Rule 2004 and Local Rule 2004-1, and other applicable law.
3. On August 1, 2011, the Debtor commenced the above-captioned bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
4. The Debtor is operating its businesses and managing its property as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case.
5. SkyTel is a creditor and party-in-interest herein. *See e.g.* Claim No. 69; 11 U.S.C. § 1109.

² If this proves valuable to the estate, then SkyTel may seek to recover some or all of the associated costs upon an appropriate further motion.

6. The Boxed Documents -- which are currently being stored in approximately 93 to 101 boxes at the Virginia facility of NCASS (*see Exhibit E*) -- directly relate to certain of the Debtor's alleged assets. More specifically, the Boxed Documents relate to the site-based FCC licenses, and related radio spectrum and radio equipment (collectively, the "Site-Based Licenses") that the Debtor allegedly purchased from Mobex Network Services, LLC ("Mobex") in or around 2005.

7. The Boxed Documents contain information highly relevant to, among other things, the issue of whether or not Mobex timely constructed and properly operated the Site-Based Licenses prior to the sale of its alleged assets to the Debtor. If Mobex did not do so in connection with some or all of the Site-Based Licenses, then those subject licenses purportedly sold to the Debtor automatically terminated by operation of law prior to the sale, and are not valid assets of the estate. In the case of such a finding, the Debtor may have valuable claims to assert against Mobex, as the seller of the licenses, for, among other possible things, breach of representations and warranties, fraud, rescission, and other remedies and associated damages that would benefit the estate.

8. Based on information and believe, the Boxed Documents also relate to a claim that was asserted by the Debtor, denied by the FCC, and currently subject to an appeal by the Debtor before the FCC,³ for a refund of \$1,301,230.00 that the Debtor seeks for alleged past payments made by, but that allegedly did not have to be made by, its predecessor holder of the subject site-Based Licenses, Mobex, as a CMRS ("Commercial Mobile Radio Service") operator

³ This proceeding is described in: *In the Matter of ... Request for Review by Waterway Communication System, LLC and Mobex Network Services, LLC of a Decision of the Universal Service Administrator*, DA 10-1013, 25 FCC Rcd 7170; 2010 FCC LEXIS 3404; released June 4, 2010. See also FCC DA 08-1971, in which the refund amount sought is stated: f \$1,301,230. A copy in FCC records is at: http://www.universalservice.org/_res/documents/about/pdf/fcc-orders/2008-fcc-orders/DA-08-1971.pdf.

of the subject licenses (the Debtor has alleged, *inter alia*, that these payments did not have to be made by Mobex because the business was actually conducted as a PMRS (“Private Mobile Radio Service”)). The Boxed Documents may contain “new” evidence in support of the refund claim, and, if that claim has merit, may thereby further benefit the estate. On the other hand, if the Boxed Documents demonstrate that the refund claim lacked a valid basis, then the Debtors’ claims against Mobex, discussed above, may increase to the benefit of the estate.⁴

9. It should be noted that there is an unresolved question regarding which entity, if any, has a current right to claim ownership of the Boxed Documents.

10. Indeed, while the Debtor has represented to the FCC and others that the Boxed Documents relate to the Site-Based Licenses it allegedly purchased from Mobex, the Debtor has also represented: (i) that it had no interest in retaining those Boxed Documents following the subject purchase; and (ii) that it (and Mobex) believed those Boxed Documents had been destroyed due to Mobex’s failure to pay outstanding storage fees.⁵

11. What is clear, however, is that the Boxed Documents are currently in the possession, custody, or control of NCASS.⁶

12. What is likewise clear is that SkyTel is entitled: (i) to examine NCASS to obtain information within the scope of Rule 2004(b), including information regarding the Boxed Documents, the other documents described in Exhibit D, and any dealings between the Debtor,

⁴ Martime’s purchase of the Site-Based Licenses from Mobex included all related assets, including this refund claim. This is reflected in various FCC documents, including footnote one of the FCC Order, DA 08-1971, the link to which is set forth in the preceding footnote.

⁵ See e.g., Declaration of David Predmore (who was, along with John Reardon, a Mobex Officer), at ¶ 5, a copy of which is attached hereto as Exhibit A; see also Debtor’s Opposition to Petition to Dismiss in FCC proceeding, at p. 3, and copy of which is attached hereto (without exhibits) as Exhibit B. The purported belief of the Debtor and Mobex in this latter regard apparently continued until SkyTel was successful very recently in locating the Boxed Documents at NCASS. See Exhibit F hereto.

⁶ This has been confirmed by NCASS in writing to SkyTel counsel. See Exhibit E. This has also been reported by FCC regulatory counsel for the Debtor, Robert Keller, to the FCC. See Exhibit F.

NCASS, or others (including Mobex) in connection therewith; (ii) to have a bonded copier inspect and copy the Boxed Documents at SkyTel's expense and for the benefit of SkyTel and the estate; (iii) to the production by NCASS of certain other documents (the "Other Documents") that are related to the dealings between the Debtor, NCASS, or others in connection with the Boxed Documents, and are described in Exhibit D hereto; and (iv) to have the Boxed Documents preserved by NCASS, and not accessed by any other person or entity other than NCASS and the bonded copier, until that bonded copier completes its work described herein.

13. Rule 2004(a) provides that upon motion of any party in interest, the Court may order the examination of any entity. Bankruptcy Rule 2004(b) sets forth the permitted scope of the examination. It provides as follows:

(b) Scope of Examination. The examination of an entity under this rule . . . may relate only to the acts, conduct or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a . . . reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

Fed. R. Bankr. P. 2004(b).

14. It is well established that the scope of discovery under Rule 2004 is broad. *In re Duratech Indus., Inc.*, 241 B.R. 283, 289 (E.D.N.Y. 1999); *In re Lufkin*, 255 B.R. 204, 208 (Bankr. E.D. Tenn. 2000); *Bank One, Columbus, N.A., v. Hammond (In re Hammond)*, 140 B.R. 197, 201 (S.D. Ohio 1992). The broad range of discovery under Rule 2004 is not restricted by the narrow range of discovery of Fed. R. Civ. P. 26, and discovery may be had under the Federal Rules of Bankruptcy Procedure of matters which would not be discoverable under the Federal

Rules of Civil Procedure. *See Matter of Isis Foods, Inc.*, 33 B.R. 45, 46-47 (Bankr. W.D. Mo. 1983).

15. It is also well established that third parties are subject to Rule 2004 discovery, and that the attendance and production of documents for inspection and copying by such parties may be compelled under the rule. *See Fed. R. Bankr. Pro. 2004(a), (c).*

16. In addition, this Court has the authority (both inherently and under 11 U.S.C. § 105) to direct that the Boxed Documents shall be preserved by NCASS, and not accessed by any other person or entity other than NCASS and the bonded copier, until the bonded copier completes its work described herein.

17. In this regard, SkyTel anticipates that it can locate a bonded copier, expert in litigation document production copying, to complete the work, and that the work can be completed, within two (2) weeks of the entry of an Order on this Motion. Accordingly, SkyTel's request for the Boxed Documents to be temporarily preserved as set forth above should not prejudice or otherwise cause harm to any other party. This is especially true since, until SkyTel located the Boxed Documents recently, both Mobex and the Debtor claim they understood them to have been destroyed long ago (after apparent permanent abandonment), and thus had no expectation of finding or using them in this or any other case. Indeed, for the reasons given herein, the relief SkyTel seeks under this Motion will benefit the estate.

18. Based on the foregoing, SkyTel requests the Court to enter an order, substantially in the form attached hereto as Exhibit C: (a) directing NCASS to provide access to the Boxed Documents, **on or before May 31, 2012** or such other date as NCASS and SkyTel may agree, so that those Boxed Documents may be inspected and copied by a bonded copier at SkyTel's expense and for the benefit of SkyTel and the estate; (b) directing that an electronic copy of the

Boxed Documents be provided to SkyTel, the Debtor, and the Committee within two (2) business days of the bonded copier completing its copying work; (c) directing NCASS (through a designated representative or representatives) to appear and testify regarding the Examination Topics at a time and place agreeable to NCASS and SkyTel, but in no event later than ten (10) days after an electronic copy of the Boxed Documents has been provided to SkyTel, the Debtor, and the Committee, with the examination to continue from day to day until complete; (d) directing NCASS to produce the Other Documents, which are specifically identified in Exhibit D hereto, to SkyTel's undersigned counsel no later than five (5) days before the commencement of the aforementioned examination, or on such other date and at such other location as NCASS and SkyTel may agree; (e) directing that the Boxed Documents shall be preserved by NCASS, and not accessed by any other person or entity other than NCASS and the bonded copier, until the bonded copier completes its copying work; and (f) granting such other and further relief as the Court deems just and proper.

19. While SkyTel would welcome NCASS's agreement to voluntarily produce documents and submit to the examination requested herein, SkyTel will, if required, serve subpoenas compelling the production and attendance consistent with the applicable rules. *See e.g. Fed. R. Bankr. Pro. 2004(c)* (providing that attendance of an entity for examination and for the production of documents may be compelled as provided for in Rule 9016 for the attendance of a witness at a hearing or trial).

20. **Because SkyTel needs to complete the discovery requested herein well prior to any deadline for objecting to the Debtor's pending proposed chapter 11 plan, SkyTel requests an expedited telephonic hearing on this Motion.**

21. In seeking the production of documents and the examination sought herein, SkyTel in no way waives its right to seek the further production of documents or additional examinations, under Rule 2004 or otherwise.

22. Other grounds to be asserted at any hearing hereon.

WHEREFORE, SkyTel respectfully requests that this Court enter an Order on the terms indicated herein. SkyTel further prays for general relief.

THIS the 24th day of May, 2012.

Respectfully submitted,

**WARREN HAVENS, SKYBRIDGE
SPECTRUM FOUNDATION, VERDE
SYSTEMS LLC, ENVIRONMENTAL LLC,
INTELLIGENT TRANSPORTATION &
MONITORING LLC, and TELESARUS
HOLDINGS GB LLC**

By: /s/ William H. Leech

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing to be filed via the Court's Electronic Case Filing System, which caused a copy to be served on all counsel and parties of record who have consented to receive ECF notification, including the following:

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I hereby further certify that I have this day caused the foregoing to be served on the following via U.S. Mail, postage prepaid, and via electronic mail:

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THIS the 24th day of May, 2012.

/s/ William H. Leech
Of Counsel

Certificate of Service

I, Warren Havens, certify that I have, on this 1st day of June 2012, caused to be served by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing filing to the following:¹

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¹ The mailed copy being placed into a USPS drop-box today may be after business hours, and therefore, not be processed by the USPS until the next business day.

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